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December 1, 2010

Senator Barry Hobbins, Senate Chair
Representative Jon Hinck, House Chair
Standing Committee on Utilities and Energy
Maine State House
Augusta, ME 04333

Dear Senator Hobbins and Representative Hinck:

I am writing in response to your letter dated March 30, 2010 related to LD 1786, An Act Regarding Energy Infrastructure, which asked the Governor's Office of Energy Independence and Security (OEIS) to draft a legislative recommendation to the following question:

“whether the Maine Turnpike Authority should receive revenues derived from the use of the Maine Turnpike for energy infrastructure development beyond the reimbursement for reasonable costs already provided for under the legislation, and if so, by what mechanism those revenues should flow to the Authority and how such revenues should be applied by the Authority.”

Per your instruction, the OEIS convened the Maine Turnpike Authority (MTA), the Office of the Attorney General and the Maine Department of Transportation (DOT) in order to discuss and develop a legislative recommendation to the question.

The required parties met several times and discussed two issues. The first was the revenue issue; whether and how much revenue the MTA should receive from an energy infrastructure project on MTA land. The second was whether revenue to the MTA would set a precedent that the MTA's bond holders would expect in the future.

In regard to the first issue, attached is OEIS' recommendation, agreed upon by MTA and DOT that the MTA receive one-half of the amount of fair value determined by the Interagency Review Panel and may not exceed an amount equal to 10% of the debt service payable by the MTA on its bonds in that calendar year and the fund may be spent by the MTA on turnpike related projects that promote energy efficiency or any other lawful purpose. This recommendation is consistent with the amendment that the Standing Committee on Utilities and Energy approved during the deliberations of LD 1786 but was not formally adopted because of a lack of time and information to make the final decision. OEIS believes this recommendation is fair and is in line with the thinking of the Committee.

In regard to the second issue, we discussed whether a precedent would be set or “vested rights” would be established on the part of the MTA’s bond holders, if the MTA should receive revenue under this agreement into the future, and if they do not receive such revenue, could consider taking legal action against the state. MTA has given verbal assurances that the MTA Board and bond counsel have agreed to the attached legislative compromise and have no intention of taking legal action in this regard. Please see the attached letter from MTA’s bond counsel and MTA’s Board of Directors’ resolution.

Please be advised that the Attorney General does not agree with the above recommendation, is concerned about “vested rights” and will be sending you a letter explaining her views on the two issues in a separate letter.

If you have any comments or questions regarding this recommendation, please do not hesitate to contact me.

Sincerely,

John M. Kerry

John M. Kerry, Director
Governor’s Office of Energy Independence and Security

cc:

Senator Dennis Damon, Senate Chair, Standing Committee on Transportation
Representative Edward Mazurek, Standing Committee on Transportation
Senator Kevin Raye, Senate President
Representative Robert Nutting, House Speaker